

Federal Communications Commission

DA 02-2310

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED & INSPECTED

NOV - 6 2002

FCC-MAILROOM

In the Matter of)
)
Reclassification of License)
of Station WLWI-FM,) RM-10570
Montgomery, Alabama and)
WQST-FM, Forest, Mississippi)

ORDER TO SHOW CAUSE

Adopted: September 11, 2002

Released: September 27, 2002

Comment Date: November 27, 2002

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a Petition for Rule Making filed by SSR Communications Incorporated ("SSR"), requesting the allotment of FM Channel 223A at Monroeville, Alabama, as that community's first competing commercial FM broadcast transmission service. Additionally, to accommodate the allotment of Channel 223A at Monroeville, consistent with the minimum distance separation requirements of the Commission's Rules, SSR also requests the reclassification of Station WLWI-FM, Channel 222C, Montgomery, Alabama, to specify operation on Channel 222C0¹ and Station WQST-FM, Channel 223C, Forest, Mississippi, to specify operation on Channel 223C0.² Station WLWI-FM currently operates on Channel 222C with an effective radiated power ("ERP") of 100 kilowatts at 334 meters height above average terrain ("HAAT"). Station WQST-FM currently operates on Channel 223C with an ERP of 100 kilowatts at 302 meters **HAAT**. Both stations are below the minimum Class C antenna height requirements of 450 meters **HAAT**. Since Station WLWI-FM and WQST-FM are operating below minimum Class C standards, they are subject to reclassification as a Class C0 facility pursuant to the *Second Report and Order* in MM Docket No. 98-93,³ and as set forth in Section 1.420(g), note 2, and Section 73.3574, note 4, of the Commission's Rules.

2. Pursuant to the reclassification procedures set forth in the *Second Report and Order, supra*, and Section 1.420(g), note 2, the reclassification of a Class C FM station to a Class C0 station may be initiated through the filing of a petition for rule making to amend the FM Table of Allotments. In instances where an initiating petition proposes amending the FM Table of Allotments in addition to the proposed

¹ The distance between the required site for requested Channel 223A at Monroeville, Alabama, and Station WLWI-FM licensed site at Montgomery, Alabama, is 152 kilometers whereas a minimum distance of 165 kilometers is required in this instance.

² The distance between the required site for requested Channel 223A at Monroeville, Alabama, and Station WQST-FM licensed site at Forest, Mississippi, is 216.7 kilometers whereas a minimum distance of 226 kilometers is required in this instance.

³ See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules. 15 FCC Rcd 21649 (2000).

reclassification of a Class C FM station, the Commission must issue an order to show cause as set forth in Section 73.3573, **note** 4. In such circumstances, a notice of proposed rule making will be issued only after the reclassification issue has **been** resolved. Therefore, in order to comply with the Commission's Class CO reclassification procedures, we must issue this **Order to Show Cause** directed to Cumulus Media L.L.C. ("Cumulus"), licensee of Station **WLWI-FM** at Montgomery, Alabama and American Family Association Incorporated ("AFA"), licensee of Station **WQST-FM** at Forest, Mississippi. Cumulus is required to show cause why its authorization should not be modified to specify operation **on** Channel 222C0 in lieu of Channel 222C at Montgomery, Alabama. AFA is also required to show cause why its authorization should not be modified to specify operation on Channel 223C0 in lieu of Channel 223C at Forest, Mississippi.

3. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest. Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure **is** set forth in Section 1.87 of the Commissions' Rules.⁴ In **this** instance, a Class CO reclassification of Station **WLWI-FM** at Montgomery, Alabama and Station **WQST-FM** at Forest, Mississippi would accommodate SSR's request to allot Channel 223A to Monroeville, Alabama, as that community's first competing commercial FM broadcast transmission service. Therefore, SSR's request has sufficient public interest **benefits** and justifies the issuance of an order to show cause.

4. The license for Station **WLWI-FM** (File No. BLH-19890412KA) at Montgomery, Alabama, can be modified to Channel 222C0 at its current authorized transmitter site located at coordinates 32-24-11 **NL** and 86-11-48 **WL**. Furthermore, the license for Station **WQST-FM** (File No. BMLED-19941021KZ) at Forest, Mississippi, can be modified to Channel 223C0 at its current authorized transmitter site located at coordinates 32-21-48**NL** and 89-25-29**WL**.

5. Pursuant to Section 1.87 of the Commission's Rules, Cumulus and AFA, may, not later than **November 27, 2002**, file a written statement showing with particularity why its respective license (File No. BLH-19890412KA) and (File No. BMLED-19941021KZ) should not **be modified** as proposed in this **Order to Show Cause**. The Commission may call on Cumulus and AFA to furnish additional information. If Cumulus and AFA raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, Cumulus and **AFA** will **be** deemed to have consented to the modification as proposed in this **Order to Show Cause** and a final **Order** will be issued by the Commission, if the channel modification is found to be in the public interest.

⁴ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Red 3327 (1987).

6. If Cumulus and AFA choose to seek authority to modify its facilities, an acceptable application for a construction permit to increase the antenna height above 450 meters HAAT for Station WLWI-FM and WQST-FM must be filed with the Commission within 180 days subsequent to the show cause response due date (November 27, 2002). ~~Upon~~ the filing of an acceptable construction permit application, the proposal to allot Channel 223A at ~~Monroeville~~, Alabama, will be dismissed. The present three-year construction period will be applicable if a construction permit is obtained by Cumulus for Channel 222C and AFA for Channel 223C, as specified herein, under this procedure. If the construction is not completed as authorized. Station WLWI-FM and WQST-FM are subject to reclassification automatically as a Class CO station. and. in that event, a new petition for rule ~~making~~ to allot Channel 223A at ~~Monroeville~~, Alabama, may be refiled.

7. ~~IT IS FURTHER ORDERED~~, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL** Send a copy of **this Order to Show Cause** by Certified Mail, Return Receipt Requested, to the following licensees:

Cumulus Media L.L.C.
Licensee of Station WLWI-FM
330 East Kilbourn Avenue
Suite 250
Milwaukee, Wisconsin 53202

American Family Association Inc
Licensee of Station WQST-FM
P.O. Drawer 2440
Tupelo, Mississippi 38803

8. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau